

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
BLANCA GARCIA

Plaintiff,

-against-

THE STOP & SHOP  
SUPERMARKET COMPANY LLC ,

Defendant.  
-----X

**PETITION  
FOR REMOVAL**

**Jury Trial Demanded  
ECF CASE**

Docket No.:

Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC, (hereinafter  
“STOP & SHOP”) petitioners for the removal of this action from the Supreme Court of the State  
of New York, County of Queens, to the United States District Court, Eastern District of New  
York, respectfully shows this Honorable Court:

**FIRST:** Plaintiff commenced an action against the above named defendant in a  
Civil Action brought against it in the Supreme Court of the State of New York, County of  
Queens, entitled:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS  
-----X

BLANCA GARCIA,

Index No.: 705161/2020

Plaintiff,

-against-

THE STOP & SHOP  
SUPERMARKET COMPANY LLC ,

Defendant.  
-----X

A copy of the Summons and Complaint in this action is annexed hereto as ***Exhibit “A”*** and made a part hereof. STOP & SHOP timely interposed their Answer, a copy of which is annexed hereto as ***Exhibit “B”***. Plaintiff served her Verified Bill of Particulars and certain discovery responses on STOP & SHOP, which are annexed hereto collectively as ***Exhibit “C”***. On or about December 28, 2020, STOP & SHOP served a motion to compel a response to our previously served demand for ad damnum pursuant to CPLR §3017. A copy of the motion is annexed hereto as ***Exhibit “D”***. Thereafter, on December 31, 2020, plaintiff served her Response to Demand for Ad Damnum setting forth her demand of \$1,000,000.00. The response is annexed hereto as ***Exhibit “E”***. Upon information and belief, the foregoing constitutes all process, pleadings and orders allegedly served upon the parties in this action.

**SECOND:** This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the plaintiff and the defendant and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.

**THIRD:** Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State of New York, County of Queens to the United States District Court for Eastern District of New York, which embraces the place where this action is pending. In her complaint Plaintiff, BLANCA GARCIA, seeks judgment as a result of personal injuries allegedly sustained on October 22, 2018 at the Stop & Shop Supermarket located at 74-17 Grand Avenue, Maspeth, New York.

**FOURTH:** The action involves a controversy between citizens of different States. The plaintiff is and was at the commencement of the action, a citizen of New York State, Queens County. The Defendant Stop & Shop Supermarket Company is a Foreign Limited Liability Company with its sole member being Ahold Delhaize U.S.A., Inc. Ahold Delhaize USA, Inc. is a Delaware Corporation with its principal place of business at 1365 Hancock Street, Quincy, Massachusetts, 02169.

**FIFTH:** Upon information and belief, Plaintiff's alleged amount in controversy exceeds the \$75,000.00 threshold. Plaintiff's Complaint did not specify the amount of damages because under NY State CPLR § 3017(c), a plaintiff in a personal injury matter in the Supreme Court of the State of New York is not permitted to asset the damages amount in the Complaint.

**SIXTH:** However, In Plaintiff's Response to Demand for Ad Damnum, dated December 31, 2020, Plaintiff claims damages in the amount of \$1,000,000.00 (One Million Dollars). While all of which is expressly denied by the defendant, based on the Plaintiff's response the claimed amount in controversy is claimed to exceed \$75,000.00. Accordingly, there exists original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. § 1332.

**SEVENTH:** The instant petition is being filed within thirty days of learning that the amount in controversy is claimed to exceed the Federal Court's jurisdictional limit in accordance with Fed. R. Civ. P. Section 1446(b). This action is also being removed within a year of commencement of the Action pursuant to Fed. R. Civ. P. Section 1446(b). No party to this action will be prejudiced by removing the Action.

**EIGHTH:** In accordance with the requirements of 28 U.S.C. Section 1446 Defendant attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Plaintiff's Summons and Complaint against the Defendant for damages filed in the Supreme Court of the State of New York, County of Queens bearing Index Number 705161/2020 (*Exhibit "A"*)
- b. The Answer interposed on behalf of Defendant STOP & SHOP (*Exhibit "B"*).
- c. The Plaintiff's Bill of Particulars (*Exhibit "C"*).
- d. The Defendant's motion to compel (*Exhibit "D"*).
- d. The Plaintiff's response to demand for ad damnum (*Exhibit "E"*)

**NINTH:** By reason of the forgoing, The Defendant desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Queens to the United States District Court for the Eastern District of New York, such being the district where this suit is pending.

**TENTH:** Concurrent with the filing of service and petition for removal, Defendants are serving this petition for removal upon the plaintiff's attorney, and filing a copy of this petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of the Queens.

**WHEREFORE,** defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC, prays that the above entitled action now pending against it in the Supreme Court of the State of New York, County of Queens be removed there from that Court.

Dated: Garden City, New York  
January 4, 2021

By: *Melissa Manna*  
MELISSA MANNA, ESQ.  
CULLEN and DYKMAN LLP  
*Attorneys for Defendant*  
THE STOP & SHOP SUPERMARKET  
COMPANY LLC  
100 Quentin Roosevelt Blvd.  
Garden City, New York 11530  
(516) 357-3700  
File No.: 23003-0186

TO: Warren Zwirn, Esq.  
ZWIRN & SAULINO, LLP  
*Attorneys for Plaintiff*  
BLANCA GARCIA  
2606 15<sup>th</sup> Street – Suite 205  
Brooklyn, New York 11235  
(718) 615-7400